



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/168366

PRELIMINARY RECITALS

Pursuant to a petition filed August 29, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 22, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services, correctly determined that the Petitioner was overpaid FoodShare benefits from March 1, 2014 through April 30, 2015, due to agency error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On January 13, 2014, the Petitioner completed an ACCESS renewal for FoodShare and Child care benefits. She reported working 35.00 hours per week, earning \$9.50 per hour. (Exhibit 6)

3. On January 21, 2014, the Petitioner submitted an Employer Verification of Earnings Form that indicated she worked 25 hours per week at \$9.50 hours. It did not indicate any commission earnings. However, the Petitioner also provided two bi-weekly paystubs, one dated January 1, 2014, showing only hourly wages for 48.18 hours, and one check dated December 27, 2015, which showed hourly wages for 54.70 hours, with year to date commissions earned of \$6,021.25. (Exhibit 5, pgs. 1-3 and Exhibits A-L, pg. 14)
4. The agency only budgeted \$484.50 every other week. (Exhibit 7, pg. 16)
5. On August 1, 2014, the Petitioner completed a SMRF, in which she reported no changes to her income. (Exhibit 6, pgs. 15-17)
6. On that same date, the Petitioner provided the agency with two bi-weekly paystubs, one dated July 17, 2014, showing hourly wages for 32.22 hours, paid time off and year to date commission of \$6,230.35; and a second stub dated July 25, 2014, showing hourly wages for 52.95 hours, bonus pay, the same year-to-date commission and paid time off. (Exhibit 5, pgs. 4-5; Exhibit A-L, pgs. 18 and 19)
7. The agency only budgeted income of \$594.61, every other week. (Exhibit 7, pg. 21)
8. On July 9, 2015, Milwaukee Enrollment Services (the agency) sent the Petitioner two notices of FoodShare Overpayment:
 - a. Claim [REDACTED] - \$3,006.00 for the period of March 1, 2014 through January 31, 2015.
 - b. Claim [REDACTED] - \$654.00 for the period of February 1, 2015 through April 30, 2015.

(Exhibit 8)

9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 29, 2015. (Exhibit 1)

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). *7 Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH), Appendix 7.3.2*. Thus, it does not matter whose error caused the overpayment, it must be recovered.

It should be noted, however, that for overpayments that are caused by agency error, the look back period begins with the date of discovery and extends back no more than twelve months. *FSH §7.3.2.1*

Looking at the case comments (Exhibit 3), it appears that the agency first became aware of a potential overpayment on January 14, 2015. It is undisputed that the overpayment of benefits occurred, because the agency failed to count the Petitioner’s commission income, even though she reported it in her paystubs.

Thus, the agency correctly limited its overpayment, beginning March 1, 2014, going forward.

At the hearing, the Petitioner did not contest the agency’s current calculation of her income and she did not dispute the rent expense and household size used by the agency.

After reviewing the worksheet attached to Exhibit 8 and the income information in the record, I can find no error in the agency’s calculation of the overpayment.

CONCLUSIONS OF LAW

Milwaukee Enrollment Services correctly determined that the Petitioner was overpaid FoodShare benefits from March 1, 2014 through April 30, 2015, due to agency error.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of October, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 20, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability